

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 20 January 2004  
*(Morning)*

Session 2

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## SUBORDINATE LEGISLATION COMMITTEE

### 3<sup>rd</sup> Meeting 2004, Session 2

#### CONVENER

\*Dr Sylvia Jackson (Stirling) (Lab)

#### DEPUTY CONVENER

\*Gordon Jackson (Glasgow Govan) (Lab)

#### COMMITTEE MEMBERS

\*Mr Stewart Maxwell (West of Scotland) (SNP)

Christine May (Central Fife) (Lab)

Alasdair Morgan (South of Scotland) (SNP)

\*Mike Pringle (Edinburgh South) (LD)

\*Murray Tosh (West of Scotland) (Con)

#### COMMITTEE SUBSTITUTES

Bruce Crawford (Mid Scotland and Fife) (SNP)

Alex Johnstone (North East Scotland) (Con)

Maureen Macmillan (Highlands and Islands) (Lab)

\*attended

#### CLERK TO THE COMMITTEE

Alasdair Rankin

#### ASSISTANT CLERKS

Joanne Clinton

Catherine Fergusson

#### LOCATION

Committee Room 3



## Scottish Parliament

### Subordinate Legislation Committee

Tuesday 20 January 2004

(Morning)

[THE CONVENER opened the meeting at 10:32]

**The Convener (Dr Sylvia Jackson):** I welcome everyone to the third meeting of the Subordinate Legislation Committee in 2004. I have received apologies from Alasdair Morgan and Christine May, who are with the Enterprise and Culture Committee, which is meeting in Campbeltown—assuming they have arrived there.

**Murray Tosh (West of Scotland) (Con):** Although my apology was doubtless contained in the minutes of last week's meeting, it did not appear in the *Official Report*.

**The Convener:** Yes—I apologise for that. I knew where you were as well. We tried to solve the matter quickly after we realised my error.

## Delegated Powers Scrutiny

### Local Governance (Scotland) Bill: Stage 1

10:33

**The Convener:** Item 1 is delegated powers scrutiny. Members will remember the question that we raised with the Scottish Executive about the Local Governance (Scotland) Bill. We have received a reply from the Executive, and we also have before us some comments from our legal advisers.

**Mr Stewart Maxwell (West of Scotland) (SNP):** You were right to use the word “reply”, convener, as that describes what we have received: we have received a response, but not an answer to our question. Frankly, I do not accept the response that we have received, which in no way explains the point that we tried to raise with the Executive. The Executive says:

“the provisions of each Bill are carefully drafted to meet the individual legal and policy needs in any given circumstances.”

Well, what were

“the individual legal and policy needs”

in these particular circumstances? Effectively, that was our question. We do not understand why there is a difference between the relevant

provision in the Local Governance (Scotland) Bill and one that we dealt with previously in the Criminal Procedure (Amendment) (Scotland) Bill. We asked why there is a difference, but we have not got any kind of answer. We should raise the matter with the Executive again, and ask it to explain why there is such a difference, rather than just telling us that there is one.

**Mike Pringle (Edinburgh South) (LD):** I entirely agree with that. When I read its response, I wondered whether the Executive had actually read the questions that we sent it or whether it had read some other question and responded to that. The reply certainly was not an answer. I entirely agree with what Stewart Maxwell says: I think that we should go back to the Executive.

**The Convener:** Are there any contrary views?

**Murray Tosh:** Absolutely not. I was not at the legal briefing earlier, but my reaction is the same as that of my colleagues who have spoken already. I wondered whether the reply was an exercise in checking whether committees read such responses, in which case the Executive should note that we have done so and that we would now like the answer.

**The Convener:** Absolutely.

**Gordon Jackson (Glasgow Govan) (Lab):** Just to join in this morning's general having-a-kick routine, I am fascinated by the phrase,

“individual legal and policy needs in any given circumstances.”

It is a bit much for me to say this, but lawyerspeak that is.

**Mike Pringle:** Ah, so we know that it was a lawyer who drafted the response.

**Gordon Jackson:** It might not have been, but it strikes me that way. We should ask the Executive now to tell us specifically what

“the individual legal and policy needs”

were in those particular circumstances.

**The Convener:** We should ask why the relevant provisions of the Local Governance (Scotland) Bill are different from those in the Criminal Procedure (Amendment) (Scotland) Bill. I ask the clerk, Alasdair Rankin, if he could draft a letter for us along those lines. That would be excellent.

## Instruments Subject to Annulment

### Shetland Islands Regulated Fishery (Scotland) Variation Order 2004 (SSI 2004/1)

10:36

**The Convener:** There are no points of substance on the order, but three issues relating to footnotes have been brought to our notice. I suggest that we convey them to the Executive by way of an informal letter.

*Members indicated agreement.*

**The Convener:** There seems to be a slightly bigger issue, however, with the regulatory impact assessment. Do members have any suggestions about whether that should be dealt with in an informal letter or through something stronger? The RIA has not been mentioned in the explanatory note.

**Mr Maxwell:** That is a rather unfortunate omission on the part of the Executive. If people want to go and look at the RIA, they need to know that it exists and where they can obtain it. Whether it is deliberate or accidental, we should raise formally with the Executive the fact that it has not included in the explanatory note the fact that the RIA exists and where to find it. There should not have been such an omission. If people are to follow and understand such orders, they should at least be told that the RIA exists and where it is.

**The Convener:** Are we all agreed on that?

*Members indicated agreement.*

### Ura Firth, Shetland Scallops Several Fishery Order 2004 (SSI 2004/5)

**The Convener:** The same point about an RIA arises again in relation to this order. Is it agreed that we include that in our correspondence?

*Members indicated agreement.*

**The Convener:** There are no further points of substance on the order, although our legal advice points out a wee typographical error in the explanatory note. We could send an informal letter about that.

### Meat Products (Scotland) Regulations 2004 (SSI 2004/6)

**The Convener:** We have three points to raise on the regulations. The first is to do with the definition of "free circulation" in regulation 2: the reference to "Article 23 of the Treaty" should read "Article 24 of the Treaty". We were informed that

that should be the case following the beavering that the legal advisers did on the matter.

The second point is whether the reference in regulation 5(3) to "paragraph (2)" is correct. Regulation 5(3) should possibly refer to paragraph (1), which is what is referred to by the equivalent English regulation. It was by looking through the English regulations that the legal advisers picked out a few points of difference.

The third point is why regulation 9(1)(g) has not been modified in a similar way to the equivalent provisions in the English regulations. It is also not clear why regulation 9 appears to have a paragraph (1) but no subsequent paragraphs. I gather that that is more of a typo.

**Mr Maxwell:** I have a point about regulation 9(1)(g). I have had a look at the equivalent English regulations and they are quite clear about how the regulations operate. It is strange that the Scottish regulations have omitted that section. Although the regulations might work, it would have been better if the Scottish regulations had included something similar to what is in the English regulations. There would then be no doubt about regulation 9(1)(g).

**The Convener:** The English regulations make it clearer.

**Mr Maxwell:** Yes.

**The Convener:** Okay, that is fine.

It has been suggested that we write an informal letter to the Executive and include paragraph 22 from the legal briefing paper. That point is about the first line of the first note in schedule 3. It is thought that the word "additives" should be in the singular. That is quite a small point.

There are two more points and we have to decide whether to deal with them by way of an informal letter or more formally. First, the preamble to the English regulations includes a reference to a consultation requirement. Secondly, there is a transposition note with the English regulations but there is not one with the Scottish regulations. Those points are included in paragraphs 24 and 25 of the legal brief. If members think that those points are sufficiently important, we should send a letter to the Executive.

**Murray Tosh:** I would send a formal letter. We have three orders to consider today that all fail in those specific respects. We have raised those points many times in the past and it is particularly irksome that the English regulations contain the required points, but the Scottish ones do not. Those three regulations are prime cases for our complaining formally. Perhaps I should say that we should formally raise the issue with the Executive.

**Mr Maxwell:** It is important to remember that when we met representatives from the Executive before Christmas, we raised the issue of transposition notes. I am sure that we were told that we would get a response to our concerns about the lack of transposition notes. As far as I am aware, we have not had any response so perhaps it is time for another formal letter to remind the Executive that we are still waiting.

**The Convener:** We should also mention that a transposition note is not included with the regulations.

**Mr Maxwell:** Yes. I also agree with the point about the omission of the reference to a consultation requirement in the preamble.

**The Convener:** Those two points will go into a formal letter to the Executive. Is that agreed?

*Members indicated agreement.*

**Mr Maxwell:** I have another point to raise about schedule 2. The point has been explained to me and I know that the schedule is correct. Column 2 of the table in schedule 2, paragraph 5 on page 10 of the regulations says that the minimum meat content for corned beef, or corned whatever, should be 120 per cent. That does not seem right. I have been told that 120 per cent is the correct minimum content but that seems slightly bizarre. I am not quite sure how we can get 120 per cent minimum meat content.

**The Convener:** I am reliably informed that the figure includes the water content.

**Mike Pringle:** The water disappears when the meat is cooked and the minimum meat content goes back to 100 per cent. I think that that is the way it works.

**Mr Maxwell:** The same would be true of any other processed meat product.

**Mike Pringle:** It only applies when the minimum meat content is expected to be 100 per cent. In most other meat products, the meat content would be less than 100 per cent. For example, in Scotch pies, the minimum required meat content is only 10 per cent. However, I understand the confusion.

**The Convener:** I have consulted our legal adviser, who thinks that we might be able to get a bit more background information so that we can ensure that that is correct. We will ask the Executive about that point.

**Mr Maxwell:** I just want to satisfy my curiosity.

10:45

**Gordon Jackson:** I thought that it was only football players who gave 120 per cent.

**The Convener:** Before we get sidetracked into talking about football, we will move on.

### **Infant Formula and Follow-on Formula Amendment (Scotland) Regulations 2004 (SSI 2004/7)**

**The Convener:** The points on these regulations are similar to those already made on the meat products regulations. The point made about regulation 9(g) of the meat products regulations is similar to the point made about new regulation 23(f) of the principal regulations, which is inserted by regulation 9 of these regulations. It would have been clearer if the regulations had been made in the same way as the English version.

The other two points are those that we are including in a letter to the Executive about the consultation reference being included in the preamble and the absence of a transposition note. We will reiterate what we said about the previous regulations. Is that agreed?

*Members indicated agreement.*

### **Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Scotland) Regulations 2004 (SSI 2004/8)**

**The Convener:** The same point arises in relation to regulation 12(g) of these regulations as arises in relation to regulation 9(g) of the meat products regulations. The two general points about consultation and the transposition note also arise. Is it agreed that we will include the regulations in our letter to the Executive?

*Members indicated agreement.*

## Mainstreaming Equality

10:46

**The Convener:** The final item is about a letter from Cathy Peattie, the convener of the Equal Opportunities Committee. She has written to all the committees asking about mainstreaming equality.

Our response has been drafted. First, it points out that we are not a policy-making committee in the same way as the subject committees. However, in our scrutiny, we have to take account of our obligations under European Community law and the European convention on human rights. We also mention the importance of consultation, which is a big issue in terms of mainstreaming equality. We should be reaching as many people as possible and trying to make sure that the legislation that we are considering is as clear as possible to as many people as possible.

We have also made Cathy Peattie and the Equal Opportunities Committee aware that we are going to undertake an inquiry into the regulatory framework and that we will consider how we will uphold the principles of mainstreaming equal opportunities. Finally, on recommendation 7, the final annual report of the previous Subordinate Legislation Committee addressed several ways in which the committee had been mainstreaming equality.

Would members like to add any other points to what I think is a masterpiece of a letter?

**Mike Pringle:** I thought it was a masterpiece.

**Gordon Jackson:** It is very good.

**The Convener:** We are agreed that we will send the letter on behalf of the committee.

**Members indicated agreement.**

*Meeting closed at 10:48.*

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